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EXAMINER

GARBE, STEPHEN P

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/937,205

Applicant(s)

SCHULZ, WERNER

Examiner

Stephen Garbe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9/21/01. 6) ☐ Other: .

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is indefinite because it is unclear what structure is required.. It appears that the phrase "of the side walls" should be changed to "of the adjacent side wall" to refer only to the one "adjacent side wall" referred to in the last line of claim 1. In addition, the singular verb "extends" should be changed to the plural form "extend" because it is describing two edge portions.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Providing the term "non-peelably" in parentheses renders the claim indefinite because it is unclear whether it is intended to limit the claim. This term should either be included in the claim without parentheses or deleted. The term "preferably" renders this claim indefinite because it is unclear whether the recitations which follow are intended to limit the claim. The claims may not include the word "preferably." This claim is further indefinite because there is no antecedent for "the sealing medium of the adjacent bag wall."

4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is indefinite for the same reason as claim 3 because it includes all of the limitations of claim 3. This claim is further indefinite

because there is no antecedent for "the inner sealing medium of the bag walls" or for "the first outer sealing medium layer."

5. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Providing the term "non-peelably" in parentheses renders the claim indefinite because it is unclear whether it is intended to limit the claim. This term should either be included in the claim without parentheses or deleted. This claim is further indefinite because it is unclear what "having a tear resistance weaker than the peel strength" refers to.

6. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is indefinite for the same reason as claim 5 because it includes all of the limitations of claim 5.

7. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is indefinite because it is unclear how many top wall upper edge portions are being claimed. It appears that "the upper edge portions of the top wall" should be changed to "the upper edge portion of the top wall" because only one top wall upper edge portion is peelably sealed and only one is disclosed as being folded over a side wall.

8. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. This claim is quite unclear. There is no antecedent for "the area of the peelable connection" or for "the inner sealing medium layer of the other wall." The phrase, "the area of the peelable connection the upper edge portion of the side wall or top wall" doesn't make sense. Applicant is requested to explain what this claim is directed to.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogorad et al, United States Patent No. 4,146,133 (Bogorad). Note the bag illustrated in Figures 3 and 4. Structurally, this bag includes virtually all claimed structural features. In addition, the right side of the bag can be deemed the "top," and the left side of the bag may be deemed the "bottom" since the bag may be oriented in any desired orientation and since providing a particular name to a bag part doesn't impart any structure to the bag. The only structural difference between Bogorad's bag and the bag defined by claim 1 is that the bottom wall 50 is not attached to side wall 34 along a transverse bottom seam. It would have been an obvious matter of choice to one of ordinary skill in the art at the time the invention was made to make Bogorad's bottom wall from a separate piece of material and attach it to both side walls by means of a transverse bottom seam because doing so is an obvious equivalent of using a unitary

element for the bottom wall. Bogorad's bag has a heat sealed peelable connection 82 between portion 48 of the top wall and side wall 32.

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bogorad et al, United States Patent No. 4,146,133 (Bogorad) as applied to claim 1. In addition, each edge portion extends beyond the peelable connection 82.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bogorad et al, United States Patent No. 4,146,133 (Bogorad), as applied to claim 1, and further in view of Hatano et al., United States Patent No. 4,915,289 (Hatano). In Figure 10, Hatano discloses a pouch having a peelable seal formed by a film strip 4 that is easily peelable on one side and permanently sealed on the other. Note column 8, lines 7-21. It would have been obvious to provide Bogorad's bag with Hatano's peelable seal because Hatano's seal is equivalent to Bogorad's. Whether the peelable side is secured to the upper edge portion of the top wall or the upper edge portion or the side wall would have been an obvious matter of choice because the seal would operate satisfactorily either way.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 3. In addition, the use of the particular claimed materials would have been obvious for one of ordinary skill in the art because the properties of such materials and their uses are old and well-known.

14. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogorad et al, United States Patent No. 4,146,133 (Bogorad), as applied to claim 1, and further in view of Gotoh et al., United States Patent No. 5,538,345 (Gotoh). In Figure 1

and col. 2, lines 44-62, Gotoh discloses the type of seal required by this claim. Note, in particular, lines 60-62. It would have been obvious to use Gotoh's disclosed seal for Bogorad's seal because they are equivalent seals that perform the same function.

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bogorad et al, United States Patent No. 4,146,133 (Bogorad), as applied to claim 1. In addition, it would have been obvious to form Bogorad's peelable connection using a hot-melt peelable strip since such strips are old and well known and since connection 82 can be a heat seal.

16. Claim 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

17. The remaining patents are cited to show other, similar bags.


18. Any inquiry concerning this application or proceeding should be directed to Stephen Garbe who can be reached at 703-308-1207. The examiner can normally be reached Monday-Thursday between the hours of 7:15 and 4:45 and alternate Fridays between the hours of 7:15 and 3:45.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on 703-308-2572.

20. The fax phone numbers for Technology Center 3700 are 703-872-9302 for papers filed in response to a non-final Office Action and 703-872-9303 for papers filed in response to a Final Office Action.

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21. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-1148.

  
Stephen P. Garbe  
Primary Examiner  
Group 3720